

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

BANK OF NEW YORK,  
as successor trustee under the pooling and  
servicing agreement dated Sept. 1, 1998,  
WMC Series 1998-B without recourse, their  
successors and assigns,

Plaintiff,

Civil No. 09-1474-AC

v.

ORDER

DIANA JOYCE ROBERTS, AND ALL  
OTHER OCCUPANTS OF THE  
PROPERTY LOCATED AT 17930 NE  
WASCO STREET, PORTLAND,  
OREGON,

Defendants.

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HAGGERTY, District Judge:

Magistrate Judge Acosta issued a Findings and Recommendation [28] that recommended granting plaintiff's Motion to Remand [4]. Objections [31] to the Findings and Recommendation were filed by defendants. The matter was then referred to this court for review.

When a party objects to any portion of a Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Findings and Recommendation. 28 U.S.C. § 636(b)(1)(B); *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Defendants filed objections in a timely manner. The court has given the file of this case a *de novo* review. For the following reasons, the objections are overruled.

### **BACKGROUND**

This action appears similar to the litigation presented in Civil Number 09-1473-AC. As in that case, Magistrate Judge Acosta provided a thorough recitation of the relevant facts here. As in that case, plaintiff pursued proceedings to evict defendant Diana Joyce Roberts and other occupants (defendants) from property located on N.E. Wasco Street, in Portland, Oregon. As in that case, defendant Roberts removed the eviction action to federal court, and plaintiff sought an Order remanding the case. The Magistrate Judge concluded that defendants failed to establish that removal is proper under either 28 U.S.C. §§ 1441 or 1443, and that plaintiff's remand motion should be granted.

### **ANALYSIS**

The Magistrate Judge provided thorough and proper analysis regarding defendants' jurisdictional problems, and explained why this action must be remanded, including reasons such as the court lacks original jurisdiction, the Complaint fails to disclose any basis for satisfying the jurisdictional minimum required in diversity cases, and defendants' due process arguments are unavailing. Findings and Recommendation at 5-7.

Defendants' Objections are similar to the arguments raised in the other case, challenging the propriety of the caption heading provided by the Findings and Recommendation and questioning plaintiff's existence and legitimacy. Defendants fail to overcome the Findings and

Recommendation's well-reasoned conclusion that removal to federal court is improper in this case.

**CONCLUSION**

The Findings and Recommendation [28] that recommended granting plaintiff's Motion to Remand [4] is adopted. The Objections [31] to the Findings and Recommendation are overruled. This action is remanded to the Multnomah County Circuit Court. Upon remand, federal action Civil No. 09-1474-AC is dismissed with prejudice, and any other pending motions are denied as moot.

IT IS SO ORDERED.

Dated this 13 day of May, 2010.

/s/ Ancer L. Haggerty  
Ancer L. Haggerty  
United States District Judge